

ORIGINAL
EX PARTE OR LATE FILED
ORIGINAL

**MYERS KELLER
COMMUNICATIONS LAW GROUP**
1522 K STREET, N.W., SUITE 1100
WASHINGTON, D.C. 20005
(202) 371-0789
FAX (202) 371-1136
E-MAIL: MAIL@MYERSKELLER.COM
HTTP://WWW.MYERSKELLER.COM

Richard S. Myers
Jay N. Lazrus+

+ Admitted to Maryland only

James J. Keller*
Abdoul K. Traore*

*Communications Engineer

March 4, 1998

VIA HAND DELIVERY

Ms. Magalie R. Salas, Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RECEIVED

MAR - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

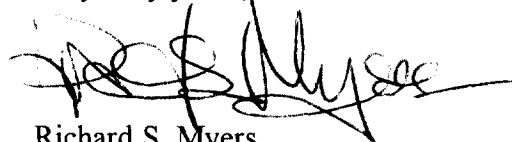
Re: **Notice of Written Ex Parte Presentation**
WT Docket No. 97-112✓
CC Docket No. 90-6

Dear Ms. Salas:

This letter is a notice that on Tuesday, March 3, 1998, Myers Keller Communications Law Group and Fleischman and Walsh L.L.P., on behalf of Petroleum Communications, Inc. and Bachow/Coastel, L.L.C., respectively, hand delivered a written ex parte presentation to Mr. David Furth, Chief, Commercial Wireless Division, Wireless Telecommunications Bureau in the above referenced proceedings. A copy of the written ex parte presentation is enclosed.

Also enclosed are a copy and file copy of this Notice. Please stamp the file copy as received and send the stamped file copy with the courier for return to Myers Keller Communications Law Group.

Very truly yours,



Richard S. Myers

Enclosures

cc: Mr. David Furth
Mr. Wilbert Nixon
Ms. Linda Chang
Mr. Roger Noel
Mr. Jay Jackson
Mr. Michael Ferrante

Mr. Stephen Markendorff
Mr. Richard Rubin
Bachow/Coastel, L.L.C.
Petroleum Communications, Inc.

No. of Copies rec'd 20 Originals
List ABCDE
+ 2 Copies

**MYERS KELLER
COMMUNICATIONS LAW GROUP**

1522 K STREET, N.W., SUITE 1100
WASHINGTON, D.C. 20005
(202) 371-0789
FAX (202) 371-1136
E-MAIL: MAIL@MYERSKELLER.COM
HTTP://WWW.MYERSKELLER.COM

RECEIVED

MAR - 3 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
James J. Keller
Abdoul K. Traore*

Richard S. Myers
Jay N. Lazrus+

+Admitted to Maryland only

*Communications engineer
(Non lawyer)

March 2, 1998

HAND DELIVERY

Mr. David Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
Seventh Floor, Room 23
Washington, D.C. 20554

Re: Cellular Service in the Gulf of Mexico
WT Docket No. 97-112
CC Docket No. 90-6

Dear Mr. Furth:

On January 21, 1998, representatives of Petroleum Communications, Inc. ("PetroCom") and Bachow/Coastel, L.L.C. ("Coastel"), the cellular licensees for the Gulf of Mexico Service Area (collectively, "Gulf carriers"), met with members of your staff to discuss issues in the referenced proceeding. During the meeting, the Gulf carriers demonstrated that extensions of land-based carriers' signals into the Gulf resulted in the capture of the Gulf carriers' subscriber traffic, and that this capture problem could be resolved by adopting a new rule for defining the Gulf carriers' service and protection contours. The Gulf carriers also presented a proposal to permit them to deploy transmitters on land while granting land-based carriers the right to collocate facilities at such sites.¹

By this letter, the Gulf carriers suggest specific rules to implement their proposal. Proposed text for the suggested rules is provided in the attachment.

¹ A notice of this ex parte meeting was filed with the Secretary on January 22, 1998.

Mr. David Furth
March 2, 1998
Page 2

1. Boundary Definition. The Gulf carriers urge the Commission to define and graphically depict market boundaries in the Gulf on 1:24,000 scale U.S. Geological Survey maps that contain a latitude/longitude grid. This definition and depiction of the boundaries should be contained in Section 22.99.² Such a rule will reduce or eliminate controversies concerning whether a carrier's signal extends into another carrier's protected service area.

2. Definition of Gulf carriers' CGSAs. The Gulf carriers propose to define their protected CGSAs by using the formula in §22.911(a)(2) at the end of a fill-in period which will commence on the date the new rules become effective.³ However, the Gulf carriers propose using the formula in §22.911(a)(1) to define the signal strength limit of the actual service provided within their market boundaries, i.e., the same formula used by land-based carriers. The result will be to place Gulf carriers and land-based carriers on equal footing in terms of signal strength at the boundaries of their markets, thereby resolving issues regarding the unauthorized capturing of subscriber traffic on land. It deserves emphasis that this proposal will not require the land-based carriers to implement any new formula or method for calculating their service contours.⁴

3. Land-Based Siting Privileges and Collocation. The Gulf carriers propose to have the right to locate new transmitters on land by meeting a measured signal ratio test. The signal ratio test will require the signal strength of a Gulf carrier's land-based transmitter to remain 6 db below the signal strength of a

² The Gulf carriers have proposed different means for defining market boundaries. PetroCom proposes using a set of specific coordinates to define boundaries. See PetroCom's July 7, 1997 comments at p. 7 and Attachment A; see also the erratum filed by PetroCom on October 7, 1997. Coastel proposes using current definitions without specific coordinates. See Coastel's August 4, 1997 reply comments at pp. 22-23.

³ Without a three-year fill-in period, Coastel does not support a proposal to define the Gulf carriers' CGSAs in accordance with service area boundaries. See item 4, *infra*.

⁴ See proposed rule section 22.911(a)(7) in the attachment.

Mr. David Furth
March 2, 1998
Page 3

land-based carrier's transmitter at all points over land, except in the near field. The near field is defined as the area within 100 meters of collocated transmitters and within 250 meters of the Gulf carrier's non-collocated transmitter on land. For all new sites of a land-based carrier within three miles from the coastal boundary, a Gulf carrier will have the right to collocate its transmitter. Likewise, a land-based carrier will have the right to collocate a transmitter at all new land-based sites of a Gulf carrier within three miles of the shoreline.⁵ As noted in footnote 3 above and item 4 below, the Gulf carriers must have a fill-in period in order for these land-based siting and collocation privileges to have any value.

4. Fill-In Period. Coastel and PetroCom have different proposals with respect to a fill-in period. PetroCom has proposed that the FCC grant its long-pending application to make its CGSA coterminous with the GMSA and that it be afforded a three-year fill-in period from the date of such grant.⁶ PetroCom has also proposed that both Gulf carriers should have 18 months from the date the new rules become effective to fill out their coverage by placing transmitters on land.⁷ Coastel has proposed that both it and PetroCom be afforded a period of three years from the date the new rules become effective because the unique characteristics of the Gulf (i.e., lack and movement of platforms in the Gulf) coupled with the effective regulatory prohibition on placing transmitters on land have made it impossible for either Gulf carrier to properly serve the coastal waters of the GMSA, particularly in the eastern part of the GMSA, regardless of the difference in CGSAs.⁸

The Gulf carriers submit that these proposed rules represent the best way to achieve the Commission's main objective, which is to ensure cellular service to the public along the Gulf coast.

⁵ See proposed rule section 22.911(f) in the attachment.

⁶ See PetroCom July 2, 1997 comments at pp. 7-9, and pp. 14-15.

⁷ Id.

⁸ See Coastel's August 4, 1997 reply comments at p. 12.

Mr. David Furth
March 2, 1998
Page 4

Clearly defining market boundaries -- and permitting Gulf carriers to provide service at the same signal strength as land-based carriers at those boundaries -- will improve coverage to the Gulf carriers' subscribers. Rules granting reciprocal collocation rights for land-based sites will greatly encourage the deployment of such sites. As shown in Exhibit 6 of the materials presented at the January 21 meeting, existing collocation arrangements between PetroCom and land-based licensees prove that collocation works to the benefit of both carriers and the public. The adoption of reciprocal collocation rules represents the most effective and prompt means at the Commission's disposal for expanding cellular service to the public along the Gulf, while satisfying the concerns expressed by the Court of Appeals in its remand order.⁹

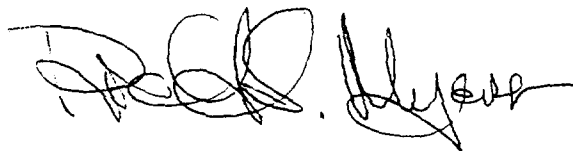
As a final matter, it should be noted that this letter describes several common positions which the Gulf carriers have taken on certain issues. They take different positions on other issues.¹⁰ Accordingly, the Gulf carriers respectfully request that the Commission consider their joint proposals as a means for resolving certain major issues, but not all issues, in this proceeding. The Gulf carriers stand ready to engage in discussions on their proposal with the land-based carriers, including in a meeting with your staff at which both sides are present.

⁹ Petroleum Communications, Inc. v. FCC, 22 F.3d 1164 (D.C. Cir. 1994).

¹⁰ For example, on the issue of the Commission's bifurcated, dual zone proposal for GMSA licensing, compare pages 2-9 of PetroCom's initial comments with pages 13-17 of Coastel's initial comments and pages 6-12 of its reply comments. Also see item 4 and footnote 2, *supra*.

Mr. David Furth
March 2, 1998
Page 5

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. S. Myers". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard S. Myers
Counsel to Petroleum Communication, Inc.

A handwritten signature in black ink, appearing to read "Richard Rubin". The signature is cursive, with the first name being more prominent.

Richard Rubin
Counsel to Bachow/Coastel, L.L.C.

Attachment

ATTACHMENT

Text of proposed Section 22.911(a)(7):

The CGSAs of GMSA licensees shall be calculated in accordance with §22.911(a)(2), provided, however, that such CGSAs in no event shall be deemed to include area covered by SABs that extend beyond GMSA market boundaries. Notwithstanding the foregoing, GMSA licensees are authorized to provide service within their market boundaries at a signal strength calculated according to §22.911(a)(1).

Text of proposed Section 22.911(f):

The following provisions shall apply to the location of transmitters on land only in MSAs and RSAs which are adjacent to the Gulf of Mexico MSA.

(1) Applications or notifications filed by land-based cellular licensees.

(i) After the effective date of this rule, the FCC will accept applications and notifications filed by land-based cellular licensees for new transmitter sites within three miles of the shoreline only if such applications or notifications include a certification from the filer that: (A) the filer has sent a copy of the filing by registered or certified mail to the GMSA licensee that operates on the same frequency block as the filer; and (B) for a period of one (1) year from the filing date of the notification or, in the case of an application, the period beginning on the filing date of the application and ending one (1) year from the date of public notice of the grant of the application, the affected GMSA licensee will be able, if it so chooses, to collocate facilities at the same site on the same terms and conditions obtained by the land-based licensee.

(ii) During the applicable period provided in subparagraph (i), the affected GMSA licensee shall have the right to file a notification or application to exercise its collocation rights. If the affected GMSA licensee is unable to obtain final FCC approval of an application filed hereunder by a date which is 120 days prior the expiration of the collocation right, it may apply for special temporary authority to operate at the collocation site while the application is pending.

(iii) The filing of any application or notification by the land-based licensee pursuant to subparagraph (i) must include a technical showing demonstrating that the licensee at all times will operate the proposed transmitter at a signal strength which is 6 db below that of the GMSA licensee at all points over water except in the near field (as defined in subparagraph (3) below), absent the consent of the effected GMSA licensee. The filing of such an application or notification shall not require the consent or agreement of any GMSA licensee provided that it complies with all other applicable rules.

(iv) The technical requirements of subparagraph (iii) also shall apply to applications and notifications filed by land-based cellular licensees exercising rights to collocate facilities pursuant to subparagraph (2)(ii) below.

(2) Applications or notifications filed by GMSA cellular licensees.

(i) After the effective date of this rule, the FCC will accept applications and notifications filed by GMSA cellular licensees for new transmitter sites within three miles of the shoreline only if such applications or notifications include a certification from the filer that: (A) the filer has sent a copy of the filing by registered or certified mail to the land-based cellular licensee that operates on the same frequency block as the filer in the MSA or RSA where the site is located; and (B) for a period of one (1) year from the filing date of the notification or, in the case of an application, the period beginning on the filing date of the application and ending one (1) year from the date of public notice of the grant of the application, the affected land-based licensee will be able, if it so chooses, to collocate facilities at the same site on the same terms and conditions obtained by the GMSA licensee.

(ii) During the applicable period provided in subparagraph (i), the affected land-based licensee shall have the right to file a notification or application to exercise its collocation rights. If the affected land-based licensee is unable to obtain final FCC approval of an application filed hereunder by a date which is 120 days prior the expiration of the collocation right, it may apply for special temporary authority to operate at the collocation site while the application is pending.

(iii) The filing of any application or notification by a GMSA licensee pursuant to subparagraph (i) must include a technical showing demonstrating that the licensee at all times will operate the proposed transmitter at a signal strength which is 6 db below that of the affected land-based licensee at all points over land except in the near field (as defined in subparagraph (3) below), absent the consent of the effected land-based licensee. The filing of such an application or notification shall not require the consent or agreement of any land-based licensee provided that it complies with all other applicable rules.

(iv) The technical requirements of subparagraph (iii) also shall apply to applications and notifications filed by GMSA cellular licensees exercising rights to collocate facilities pursuant to subparagraph (1)(ii) above.

(3) The near field is defined as the area within 100 meters of a land site where the GMSA licensee and the land-based licensee have collocated transmitter facilities, and within 250 meters of a land site where a GMSA licensee or land-based licensee has located transmitter facilities without collocating with the other carrier.

(4) From the effective date of this rule, the GMSA licensees shall have an additional fill-in period to provide coverage within their GMSA market boundaries as follows: [insert description of additional fill-in period].